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EXAMINER

SWARTZ, JAMIE H

ART UNIT	PAPER NUMBER
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3694

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/034,473

Applicant(s)

PELLETIER, DANIEL

Examiner

Jamie H. Swartz

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant(s) regard as their invention.

3. Claim 20 recites the limitation "predetermined commercial thresholds" line 4. "Predetermined commercial thresholds" is vague and renders the claim indefinite because it is unclear what the commercial thresholds are, or how they are predetermined. Without knowing what these thresholds are the popularity, which is defined by the thresholds, is unclear also.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

Art Unit: 3694

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-10, 13, and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Arganbright et al. (US 6980962 B1).

6. Regarding claim 1, Arganbright discloses *a method for providing a graduate revenue stream to recommenders of at least one of products and services (P/S)* (col. 2, line 16 – col. 10, line 14). Arganbright discloses *providing a central site that provides information and permits purchasing with regard to at least one of products and services (P/S)* (col. 2, line 19-42, col. 5, line 47 – col. 6, line 4). Arganbright discloses *determining whether a customer query/purchase is based on a recommendation* (col. 2, lines 19-42, col. 10, lines 30-37). Arganbright discloses *a base price if the query/purchase is not based on a recommendation* (col. 2, lines 19-42, col. 10, lines 30-37). Arganbright discloses *a base price plus adding of an incremental value i to the base price if there has been a recommendation* (col. 35, line 58 – col. 36, line 5 and Table 2 (col. 38)) Arganbright discloses *paying a percentage of the incremental value i to a first recommender R_1* (col. 34, lines 40-50, col. 34, line 64 – col. 35, line 3).

7. Regarding claim 2, Arganbright discloses *wherein there are a plurality of successive recommenders for a product/service purchased by purchaser P , wherein the purchaser P pays the lowest incremental value i in addition to the base price regardless of a position of the plurality of recommenders* (col. 26, line 46 – col. 28, line 60).

Art Unit: 3694

Arganbright discloses *each one of the plurality of successive recommenders receives an equal percentage of the incremental value i* (col. 35, lines 11-21).

8. Regarding claim 3, Arganbright discloses *wherein there are a plurality of successive recommenders, and wherein a latest recommender is paid a largest percentage of incremental value i and each previous recommender is paid a percentage of the percentage paid to the latest recommender* (col. 33, line 65 – col. 34, line 23, col. 26, line 46 – col. 28, line 60, col. 43, line 60 – col. 44, line 26).

9. Regarding claim 4, Arganbright discloses *wherein the first recommender receives a percentage of the percentage of all recommendations made by successive recommenders* (Fig. 2, col. 29, lines 9-27, col. 33, line 65 – col. 34, line 23).

10. Regarding claim 5, Arganbright discloses *wherein when no recommendation has been made in step (c), defining P as the first recommender $R1$ in a new branch for the (P/S)* (col. 45, line 10 – col. 46, line 29, col. 32, lines 47-57).

11. Regarding claim 6, Arganbright discloses *wherein the central site comprises a website* (col. 2, lines 19-42).

12. Regarding claim 7, Arganbright discloses *wherein the plurality recommendations are posted on a website* (col. 55, lines 22-31, col. 57, lines 22-27, col. 58, lines 33-44).

13. Regarding claim 8, Arganbright discloses *wherein recommendations are emailed to the customer* (col. 55, lines 12-46, col. 71, line 64 – col. 72, line 49).

14. Regarding claim 9, Arganbright discloses *wherein the email message contains hypertext which provides identifying information about the recommender to the central site when the customer queries/purchases a P/S* (col. 50, lines 38-49, col. 55, lines 12-46, col. 64, lines 39-64).

15. Regarding claim 10, Arganbright discloses *wherein the incremental value added to the base price is based on a count of purchases of the P/S by a particular group of the plurality of recommenders* (Table 1, col. 35, lines 22-55).

16. Regarding claim 13, Arganbright discloses *wherein the plurality of recommendations are categorized by at least one of price, and type of P/S* (col. 51, lines 57-64, col. 60, lines 48-56).

17. Regarding claim 17, Arganbright discloses *wherein the incremental value i is increased according to predetermined thresholds* (Table 1, col. 35, lines 22-55).

18. Regarding claim 18, Arganbright discloses *wherein the predetermined threshold comprises number of sales* (Table 1, col. 35, lines 22-55).

19. Regarding claim 19, Arganbright discloses wherein when a particular P/S is not specifically recommended but is part of a predetermined category, the incremental amount paid to a recommender is less than if the P/S were specifically recommended (col. 23, lines 19-36, col. 28, lines 46-60, col. 31, lines 31-53, col. 33, line 36 – col. 39, line 23).

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 11-12, 14-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arganbright in view of either Kannan et al. (US 20040230511 A1 the provisional of which is application 60341264) or van Zoest et al (US 6496802 B1).

22. Regarding claim 11, Arganbright discloses a computer aided multilevel marketing system utilizing recommendations, a price structure, and sales on a website. Arganbright does not disclose the specific feature of the sale of music. Kannan discloses *wherein the (P/S) comprises music* (pg 2, lines 13-17). Arganbright specifically discusses a sales system using recommendations and a multilevel

marketing concept. Kannan also specifically discusses a referral network and the concept of multi-level marketing to sell products. Arganbright is missing the specific detail of music, though it is discussed that the sale concept could be used with various products. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Arganbright to include the details of selling music, as the specific method of a graduated revenue business model for content creator and recommenders is not affected by what is sold.

23. Regarding claim 12, Arganbright discloses a computer aided multilevel marketing system utilizing recommendations, a price structure, and sales on a website.

Arganbright does not disclose the specific feature of the sale of music. Kannan discloses *wherein the (P/S) comprises movies* (pg 2, lines 13-17). Arganbright specifically discusses a sales system using recommendations and a multilevel marketing concept. Kannan also specifically discusses a referral network and the concept of multi-level marketing to sell products. Arganbright is missing the specific detail of movies, though it is discussed that the sale concept could be used with various products. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Arganbright to include the details of selling movies, as the specific method of a graduated revenue business model for content creator and recommenders is not affected by what is sold.

24. Regarding claim 14, Arganbright discloses a computer aided multilevel marketing system utilizing recommendations, a price structure, and sales on a website.

Arganbright does not disclose the specifics of qualitative ratings by the recommenders.

Kannan discloses wherein *the feature of plurality of recommendations are categorized by qualitative ratings by the recommenders* (pg. 6, line 17 – pg. 7, line 4). Arganbright specifically discusses a sales system using recommendations and a multilevel marketing concept. Kannan also specifically discusses a referral network and the concept of multi-level marketing to sell products. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Arganbright to include the details of categorizing recommendations by qualitative ratings because when people are making recommendations they make them by what meets their needs as well as quality standards. Quality ratings have existed for years as well as categorizing based on the rating. When viewing products/ services such as hotels, they are categorized based on quality. Adding a quality rating feature to Arganbright would allow for customers to see which products are superior, which is cheap advertisement to get more sales out of their customers.

25. Regarding claim 15, Arganbright discloses a computer aided multilevel marketing system utilizing recommendations, a price structure, and sales on a website.

Arganbright does not disclose the specifics of categorizing by artist, name, or recording label. Kannan discloses *wherein the P/S is categorized by one of artist, group name, and recording label* (pg. 5, line 1-9). Arganbright specifically discusses a sales system

using recommendations and a multilevel marketing concept. Kannan also specifically discusses a referral network and the concept of multi-level marketing to sell products. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Arganbright to include the details of categorizing by artist, group name, or recording label. Since Arganbright does specifically state the sale of music in the prior art, the prior art does not specifically state the details of music. As stated in the claim 11 rejection it would have been obvious to include the sale of music in Arganbright's system. Because of this categorizing music according to artist, group name, or even record label, allows for ease of use and makes the program or system more user friendly. When programs are more user friendly, it causes a stronger desire of use which, since their earnings are based on use, equates into more money for the company.

26. Regarding claim 16, Arganbright discloses a computer aided multilevel marketing system utilizing recommendations, a price structure, and sales on a website.

Arganbright does not disclose the specifics of downloading the product off of a central site. Kannan discloses *wherein the P/S is downloaded to the customer via the central site* (pg. 2, line 13-17). Arganbright specifically discusses a sales system using recommendations and a multilevel marketing concept. Kannan also specifically discusses a referral network and the concept of multi-level marketing to sell products. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Arganbright to include the details of downloading the product off of a

Art Unit: 3694

central site. Arganbright discusses the sale of electronic or digital gift certificates (col. 55, lines 1-4). As stated in the claims 11 and 12 rejections it would have been obvious to include the sale of music and movies in Arganbright's system. Because of this allowing the product to be downloaded is a very efficient and price effective way of distributing the product. When a customer is able to download the product this allows the company to save money on postage, storage, packaging and software, which allows them minimize costs to optimize profit. Downloading the product directly also allows the customer to receive the product instantaneously, leading to better customer satisfaction. It would have been obvious since Arganbright does include the sale of electronic gift certificates, to apply this same distribution method to music or movies.

27. Regarding claim 20, Arganbright discloses a computer aided multilevel marketing system utilizing recommendations, a price structure, and sales on a website.

Arganbright does not disclose the specifics of correlating recommendation based on popularity. van Zoest discloses *further comprising providing customer query of recommenders having a highest correlation of recommendations for popular P/S, wherein popularity is defined by predetermined commercial thresholds* (pg. 2, line 13-17). Arganbright specifically discusses a sales system using recommendations and a multilevel marketing concept using a computer network. van Zoest specifically discusses a method for providing electronic works over a network. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Arganbright to include the details of correlations based on recommendations for popular

Art Unit: 3694

products and services. van Zoest sells products over the internet as does Arganbright. Popular items are widely known for being a favorite. With the wide array of brand names and functions of products offered, the popular opinion is a short cut and helps people to narrow in on what other people are buying. Social influence affects decision-making in a market. Modifying Arganbright to include popular opinion would allow customers an extra service and would allow them to have a reference point to streamline their decisions.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamie H. Swartz whose telephone number is (571) 272-7363. The examiner can normally be reached on 8:00am-4:30pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3694

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jamie Swartz
February 27, 2007


ELLA COLBERT
PRIMARY EXAMINER